

ZONING BOARD OF APPEALS

Draft Minutes

Thursday, May 25, 2017

6:00 pm

Council Board Room

One Batavia City Centre, Batavia, NY

Members present: *Deborah Kerr-Rosenbeck, Jim Russell, Paul McCarthy*

Members absent: Bill Cox, Nicholas Harris

Others present: Doug Randall – Code Enforcement Officer, Janice Smith –
Recording Secretary

I. Roll Call

Roll call of the members was conducted. Three members were present and Chairman McCarthy declared a quorum.

II. Call to Order

Mr. McCarthy called the meeting to order at 6:01 pm.

III. Pledge of Allegiance

IV. Approval of Minutes

There were no corrections to the minutes. Mr. McCarthy assumed the motion and the minutes were approved by unanimous consent.

RESULT: Approval of April 27, 2017 minutes.

V. Zoning Board of Appeals statement

Mr. McCarthy explained the role of the Zoning Board of Appeals and the procedures it follows.

VI. Variance Requests

- A. Area Variance: Placement of a 14' x 28' in-ground swimming pool in the east side yard of this corner lot property

Address: *200 North Spruce St.*

Applicant: Roberta Terbuska, owner

- Actions:
1. Review application
 2. Public hearing and discussion
 3. Action by the board

1. Review Application

Acting Vice Chair Deborah Kerr-Rosenbeck read the summary of the proposal.

2. Public Hearing and Discussion

MOTION: Mr. McCarthy moved to open the public hearing; the motion was seconded by Mr. Russell, and on roll call, was approved 3-0.

RESULT: Public hearing opened at 6:06 pm.

There was no one else present who wished to speak, and no calls or letters regarding the project.

MOTION: Mr. McCarthy moved to close the public hearing; the motion was seconded by Mr. Russell, and on roll call, was approved 3-0.

RESULT: Public hearing closed at 6:07 pm.

Mr. Russell commented that one possible alternative is to move the pool further back on the property. He also said that if the board approved the application, he would like to see a privacy fence on the North St. side of the property. He acknowledged, however, that this option could be cost prohibitive because the existing gazebo would have to be moved and a water feature diverted.

Ms. Terbuska said that the plan is to plant mulberry bushes to provide a screen for the property. She pointed out that mulberry bushes are already being used to screen the hot tub room at the side of the house.

Mr. McCarthy asked if the current fence would be staying, and Ms. Terbuska said that it would, and then the bushes will be planted in front of the fence (the street side of the fence).

Mr. Randall explained that according to the BMC, the bushes cannot be planted 15' from the front property line; therefore, the bushes would have to go in the back. If she chose to, Ms. Terbuska could apply for a zoning variance for a fence taller than 3', but not for the bushes.

Mr. McCarthy went through the list of supporting criteria for the variance:

- Undesirable change in neighborhood character: no
- Alternative cure sought: discusses possible alternatives
- Substantiality: no
- Adverse effect or impact on neighborhood/community: yes
- Self-created: yes

3. Action by the Board

MOTION: Mr. McCarthy moved to approve the variance with the stipulation that the 4' tall fence remains, and a buffer zone of 6' tall bushes is planted 15' behind the property line; or the 4' tall fence is replaced by a 6'tall fence, with a 60 day time to obtain the permit. The motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 3-0.

RESULT: Approval of Area Variance.

- B. Area Variance: Construction of a 6' x 12' pressure treated wood frame deck and roof structure on the northeast corner of this existing one family

dwelling. The proposed location of the deck is within the 20' front yard clear space

Address: 10 East Ave.
Applicant: Scott Schuler, contractor

Actions: 1. Review application
2. Public hearing and discussion
3. Action by the board

1. Review Application

Ms. Kerr-Rosenbeck read the summary of the proposal. Mr. McCarthy noted that though the application was submitted to the Genesee County Planning Board for review, it was not reviewed.

2. Public Hearing and Discussion

MOTION: Mr. McCarthy moved to open the public hearing; the motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 3-0.

RESULT: Public hearing opened at 6:26 pm.

Mr. Shuler described the front steps as very steep and said that in the winter they become snow covered and slippery. The homeowners would like to install a window where the front door is now located, and move the door to the side of the house.

There was no one else present who wished to speak, and no calls, letters, or email concerning the proposal.

MOTION: Mr. Russell moved to close the public hearing; the motion was seconded by Mr. McCarthy, and on roll call, was approved 3-0.

RESULT: Public hearing closed at 6:26 pm.

3. Action by the Board

Mr. McCarthy went through the list of supporting criteria for the variance:

- Undesirable change in neighborhood character: no
- Alternative cure sought: no
- Substantiality: no
- Adverse effect or impact on neighborhood/community: no
- Self-created: no

MOTION: Mr. Russell moved to approve the variance, with a 60 time limit to obtain the permit. The motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 3-0.

RESULT: Approval of Area Variance.

C. Area Variance: placement of an 86 lin.' long 8' tall vinyl fence along a portion of the northwest property line

Address: 411 Garden Dr.

Applicant: Dominic Cavaliri, owner

Actions: 1. Review application
2. Public hearing and discussion
3. Action by the board

1. Review Application

Ms. Kerr-Rosenbeck read the summary of the proposal.

2. Public Hearing and Discussion

MOTION: Mr. McCarthy moved to open the public hearing; the motion was seconded by Mr. Russell, and on roll call, was approved 3-0.

RESULT: Public hearing opened at 6:28 pm.

Mr. Cavaliri explained that his fence was damaged by a neighbor's tree during the wind storm, and he would like to replace a section and straighten it at the same time.

Mr. McCarthy read a letter from the neighbors at 409 Garden Dr., Mr. and Mrs. D'Amico, who have no objection to the construction of the 8' fence.

MOTION: Mr. Russell moved to close the public hearing; the motion was seconded by Mr. McCarthy, and on roll call, was approved 3-0.

RESULT: Public hearing closed at 6:32 pm.

Mr. McCarthy went through the list of supporting criteria for the variance:

- Undesirable change in neighborhood character: no
- Alternative cure sought: no
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: no

3. Action by the Board

Mr. McCarthy asked why the fence needs to be 8' tall, and Mr. Cavaliri responded that one of the neighbors has a high deck, and an increase in the height of the fence would allow for greater privacy.

Mr. Russell objected to the proposed height of the fence because he believes it could set a precedent. He thinks there could be other options.

Ms. Kerr-Rosenbeck supported approval of the fence because it does not obscure sight lines or affect the general public in any other way.

Mr. McCarthy noted that the ZBA approved an 8' tall fence the previous year. He also supported the proposal considering that the fence would be in the rear yard and the neighbor has no issue with it.

Mr. McCarthy went through the list of supporting criteria for the variance:

- Undesirable change in neighborhood character: no, it's a minor change
- Alternative cure sought: possible alternative
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: yes

MOTION: Mr. McCarthy moved to approve the variance with 60 days to obtain the permit. The motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, the vote was recorded 2-1.

RESULT: The Area Variance could not be approved because according to the BMC, a variance must be approved by a majority of the total number of board members.

D. Use Variance: change the first floor use of this mixed use building (commercial first floor; dwelling unit second floor) from business office to dwelling unit, changing the occupancy classification of this building to a two family dwelling. There is no off street parking available on this property due to space constraints.

Address: *119 Washington Ave.*

Applicant: Gregg Torrey, owner

Actions: 1. Review application
2. Public hearing and discussion
3. Action by the board

1. Review Application

Ms. Kerr-Rosenbeck read the summary of the proposal. Mr. Randall explained that one of the apartments has already been approved; the ZBA is concerned with the lower apartment and an area variance for relief of the regulations requiring two off-street parking spaces for it. Mr. McCarthy reported that the PDC recommended approval.

2. Public Hearing and Discussion

MOTION: Mr. McCarthy moved to open the public hearing; the motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 3-0.

RESULT: Public hearing opened at 6:40 pm.

Ron Viele, contractor for the project, was available to answer questions. Ms. Kerr-Rosenbeck asked if the tenant of the lower apartment would need to get a parking permit, and

Mr. Randall answered that a permit for parking in a City lot would be obtained from the City Manager's Office.

There was no one else who wished to speak, and no calls, letters, or email concerning the proposal.

MOTION: Mr. McCarthy moved to close the public hearing; the motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 3-0.

RESULT: Public hearing closed at 6:43 pm.

3. Action by the Board

Mr. Russell observed that the building is located in an old section of the City, which frequently presents parking issues, and there is really not much that can be done except make sure owner provides parking permits for the tenants.

Mr. McCarthy went through the list of supporting criteria for the variance:

- Undesirable change in neighborhood character: no
- Alternative cure sought: owner has been unsuccessfully trying to buy land for a parking alternative
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: no

MOTION: Mr. Russell moved to approve the variance with the condition that the owner takes responsibility for making sure that parking permits are secured. The motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 3-0.

RESULT: Approval of Area Variance.

VII. New Business: none

VIII. Setting of Next Meeting: June 22, 2016

IX. Adjournment

Mr. McCarthy moved to adjourn the meeting at 6:49 pm; Mr. Russell seconded. All voted in favor.



Meg Chilano

Bureau of Inspection Secretary